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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Neil D. Scancarella

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EXAMINER

YU, GINA C

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/066,005	Applicant(s) SCANCARELLA ET AL.	
	Examiner GINA C. YU	Art Unit 1611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17, 38-41 and 56-65 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17, 38-41, 56-65 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/30/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt is acknowledged of amendment filed on July 23, 2008. Claims 17, 38-41, 56-65 are pending. Claim rejections made in the previous Office action dated June 27, 2008 is withdrawn in view of the claim amendment made by applicant. New rejections are made to address the new claim limitation.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 17, 38-41, 56 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drechsler in view of Finkenaar et al. (US 4935228) ("Finkenaar") and Amoco Technical Data.

Drechsler is relied upon as discussed above. As mentioned above, Drechsler fails to specifically teach using a liquid polymeric hydrocarbon with number average greater than about 650 in the overcoating composition.

Finkenaar teaches lip-gloss composition comprising a mineral oil gel which comprising polybutene, a wear-enhancing agent. See Examples 2-5. Also called "masking oil", polybutene is said to make "the lip gloss more water proof and permits it to retain its coloring and other beneficial effect on the wearer's lips for a substantially longer period", or up to 3 hours. See col. 3, lines 17 - 33. The reference teaches polyiso- and normal butenes supplied by AMOCO [sic] from INDOPOL, H-100, H-300, and 1500. See col. 4, lines 24 - 33. The lip-gloss

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composition is said to be a low pigmented, high shine lip preparation. See col. 1, lines 60 - 64.

Finkenaar fail to teach the number average molecular weight of the polybutene.

Amoco Technical Data teaches polybutene Indopol H-100 having number average molecular weight 940. The reference teaches that the polybutene is used in personal care products. See instant claim 57.

It would have been obvious to one of ordinary skill in the art at the time the invention was made modify the overcoating composition of Drechsler by adding the polybutene of Finkenaar and Amoco, as motivated by the references, because 1) Drechsler teaches that overcoating compositions enhance gloss, shine, and feel, and can be any commercially available composition which does not significantly disrupt the film-forming coloring composition; and 2) Finkenaar and Amoco teach that polybutene having nMW 940 makes more water proof and longer-lasting lip gloss. The skilled artisan would have had a reasonable expectation of successfully producing an overcoating lip-gloss composition with enhanced waterproof and long lasting effects.

Claims 17, 38-41, 58, 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drechsler et al. (US 6074654) ("Drechsler") in view of Manufacturing Chemist, ExxonMobil Chemical Technical Data.

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Drechsler discloses a lip color film-forming composition comprising crosslinked organosiloxane resins such as Wacker 803 from Wacker Silicones Corp. (trimethylsiloxysilicate) and pigments in a volatile carrier. See col. 7, line 46 - col. 9, line 2. The reference also discloses a method of enhancing the gloss, shine, and feel of lip composition by apply a complimentary product, known as "overcoat" or "topcoat", over the film formed after application of a transfer-resistant lip composition. See col. 10, line 63 - col. 16, line 7. The reference also teaches in col. 2, lines 7-13 that it is well known in the art to formulate a transfer-resistant cosmetic composition with trimethylated silica and volatile solvent. The reference teaches using the film forming silicone resin in the amount ranging from 10 to 95 %. The reference also teaches that the overcoating composition can be liquid or solid and include "any that are commercially available or to be developed, provided the aggregate of the materials comprising the overcoat does not significantly disrupt" the film-forming composition. See col. 11, line 64 - col. 11, line 29; instant claims 38-40. Example 5 shows a composition comprising wax. See instant claim 41. Examples teach that the coloring film-forming composition and overcoating composition are stored in a separate lipstick cases. See instant claim 18. There is no teaching in Drechsler to use non-volatile silicone oil in the lip composition, thus the limitation that excludes non-volatile silicone oil from the wetting agent is met.

Drechsler fails to specifically teach using a liquid polymeric hydrocarbon with number average greater than about 650 to make an overcoating composition.

Manufacturing Chemist teaches that poly-a-olefins (notably polydecene) are "popular as oil-free emollients", which are used as "pigment wetting and dispersing aids

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and recommended as a replacement for mineral oil". See p. 2, Base Formulation Improvements, 3rd par. The teaching here would have motivated a skilled artisan to exclude mineral oil. These emollients are said to be "colourless, odourless, non-toxic and non-greasy and blend well with most cosmetic oils". See Id. The reference teaches that the products under PureSyn trademark from Mobil Chemicals and Arlamol brand by Uniqema are available in different viscosity grades. See instant claims 38-40.

ExxonMobil Chemical teaches that PureSyn polyalphaolefins are hydrogenated hydrocarbon fluid. See claim 58. The reference teaches PureSyn 150 and 300 having a number average molecular weight of 3,500 and 5,100, respectively. See claim 59. The polyalphaolefins are "premium fluids whose features set them apart from other hydrocarbon fluids such as mineral oils, petrolatum, and polybutene"; "bright and clear, water-white, high-purity", "nongreasynonoily", "nonirritatingstable in low and high pH systems", and applicable in personal care formulations including cosmetics.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to have modified the invention of Drechsler by adding the hydrogenated poly-a-olefins such as polydecene as taught by Manufacturing Chemist and ExxonMobile Chemicals, because 1) Drechsler teaches that overcoating compositions enhance gloss, shine, and feel, and can be any commercially available composition which does not significantly disrupt the film-forming coloring composition ; and 2) Manufacturing Chemist and ExxonMobile Chemicals specifically teach that poly alpha-decenes are popular emollients in cosmetic art, colorless, odorless, non-toxic, and non-greasy. The skilled artisan would have had a reasonable expectation of

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successfully producing an overcoating lip-gloss composition with good emolliency and less greasiness. As for claim 44, the rheology of the composition obviously is present in the overcoating composition of the combined references.

Claims 60-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drechsler, Finkenaur, and Amoco Technical Data as applied to claims 17, 38-41, 56 and 57 as above, or, alternatively, over Drechsler, Manufacturing Chemist, and ExxonMobile Chemical as applied to claims 17, 38-41, 58 and 59 as above, and further in view of STN-Registry.

Drechsler is relied upon as discussed above. The reference teaches using 10 % of Bentone Gel VS-5PC but does not specifically mention it is quaternized hectorite.

STN-Registry teaches that Bentone Gel VS -5PC contain quaternium-18 hectorite and cyclomethicone. See instant claims 60-65.

It would have been obvious to one of ordinary skill in the art that the lip coloring composition of the combined references would contain quaternium-18 hectorite, because Drechsler teaches Bentone Gel VS-5PC and STN-Registry teaches that Bentone Gel VS-5PC contains the clay material, was commercially available, and used in the lip coloring cosmetic at the time of the present invention.

Response to Arguments

Applicant's arguments filed on July 23, 2008 have been fully considered but they are not moot in view of the new grounds of rejection.

Conclusion

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GINA C. YU whose telephone number is (571)272-8605. The examiner can normally be reached on Monday through Friday, from 9:00AM until 5:30 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau can be reached on 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gina C. Yu/

Primary Examiner, Art Unit 1611